

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Kelly Hotchkiss

NOTICE OF HEARING AND
MOTION FOR RELIEF FROM
AUTOMATIC STAY

Debtor

Chapter 7, Case No. 04-34908

TO: Kelly Hotchkiss, INCLUDING TRUSTEE AND OTHER INTERESTED PARTIES

1. Mortgage Electronic Registration Systems, Inc., (“Movant”), a corporation, by its attorneys, moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this motion at 10:30 am on October 19, 2004, in Courtroom 228B, 316 North Robert Street, St. Paul, MN 55101 or as soon thereafter as counsel can be heard.

3. Any response to this motion must be filed and delivered not later than on October 14, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than October 7, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

4. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, FRBP Nos. 5005 and Local Rule 1070-1. This is a core proceeding. The Chapter 7 case was filed on August 20, 2004, and is now pending in this court.

5. This motion arises under 11 U.S.C. § 362 and Federal Rules of Bankruptcy Procedure 4001, and is filed under Federal Rules of Bankruptcy Procedure 9014 and Local Rules 1201-1215. Movant requests relief with respect to the property of Debtor, subject to a mortgage to Movant.

6. Debtor above-named is the owner of certain real property located at 318 Appleblossom Lane, Shakopee, MN 55379, legally described as follows, to-wit:

The Westerly 38.91 feet of Lot 4, Block 1, Orchard Park 2nd Addition, Scott County, Minnesota.

7. The indebtedness of Kelly Hotchkiss is evidenced by a Promissory Note and Mortgage dated March 15, 2002, filed of record in the Scott County Recorder's office on April 10, 2002, and recorded as Document No. A-544925. A true and correct copy of the front page of the recorded mortgage is attached as Exhibit A. Said mortgage was subsequently assigned to Movant.

8. The Debtor has failed to pay monthly mortgage payments since August 1, 2004, and is in default in the amount of \$4,627.58 together with reasonable attorneys fees and costs incurred pursuant to the note and mortgage. Debtor has failed to make any offer of adequate protection. Accordingly, Movant's interest is inadequately protected.

9. The total amount due under the mortgage and note as of the date of hearing is \$154,368.12.

10. The Scott County Assessor's Office has estimated the value of the homestead as \$140,600.00, and accordingly, Debtor has no equity in the premises and the property is not necessary to an effective reorganization.

11. By reason of the foregoing, Movant is entitled to have the automatic stay lifted and vacated so it can recommence the mortgage foreclosure action pursuant to Minnesota Statutes.

WHEREFORE, Movant by its undersigned attorney, moves the Court for an Order that the automatic stay provided by 11 U.S.C. Section 362 (A) be terminated to permit Movant to foreclose its mortgage on the subject property, and for such other and further relief as may be just and equitable.

Dated: September 30, 2004

USSET & WEINGARDEN P.L.L.P

By: /E/ Paul A. Weingarden/Brian H. Liebo
Paul A. Weingarden, #115356
Brian H. Liebo #277654
Attorney for Movant
4500 Park Glen Road, #120
Minneapolis, MN 55416
(952) 925-6888

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Kelly Hotchkiss

AFFIDAVIT OF PETITIONER

Debtor

Chapter 7, Case No. 04-34908

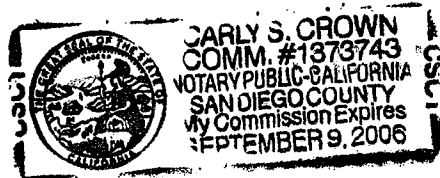
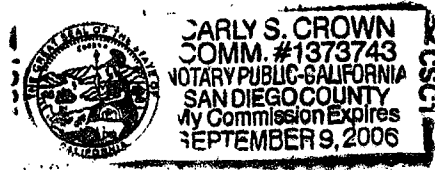
STATE OF ~~OHIO~~ ^{California}
COUNTY OF ~~FRANKLIN~~ ^{San Diego}

Candice L. Hobbs, being first duly sworn, deposes and states on oath that she/he is employed by Mortgage Electronic Registration Systems, Inc., the movant in this action, that she/he has read the annexed Notice of Hearing and Motion for Relief From Automatic Stay, and that it is true of ~~her~~ his knowledge to the best of her/his information.

Candice L. Hobbs

Subscribed and sworn to before me this
15 day of Sept, 2004.

Carly S. Crown
Notary Public



Doc. No. A 544925

OFFICE OF THE COUNTY RECORDER
SCOTT COUNTY, MINNESOTA

Certified Filed and/or Recorded on

04-10-2002 at 10:00 Receipt: 173112

Pat Boeckman, County Recorder 01

Fee: \$ 20.00

Amount of \$ 352.44 paid
Receipt No. 173109
Amount Fee Paid
W *James Berg* County Auditor

[Space Above This Line For Recording Data]

MORTGAGE

MIN 1000381-1000649549-4

Return To:
RETURN TO: CRESCENT MTG.
SERVICES
5881 GLENRIDGE DR. suite
170, ATLANTA, GA 30328

✓ 77-6471167
UNIVERSAL TITLE
METRO PRODUCTION
7777 WASHINGTON AVE
EDINA, MN 55439

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated March 15, 2002 ,
together with all Riders to this document.

4HOTCHKISS, KELL

1000649549

MINNESOTA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

Form 3024 1/01

VMP -6A(MN) (0005).01

Page 1 of 15 MW 05/00.01 Initial MW 05/00

VMP MORTGAGE FORMS - (800)521-7291

KTH
AA



(B) "Borrower" is KELLY T HOTCHKISS and Abe Hotchkiss, wife and husband

Borrower is the mortgagor under this Security Instrument.

(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. **MERS is the mortgagee under this Security Instrument.** MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(D) "Lender" is PRESIDENTIAL MORTGAGE CORPORATION

Lender is a CORPORATION

organized and existing under the laws of

MINNESOTA

Lender's address is 900 WEST 128TH STREET, #202, BURNSVILLE, MN 55337

(E) "Note" means the promissory note signed by Borrower and dated March 15, 2002. The Note states that Borrower owes Lender One Hundred Fifty Three Thousand Two Hundred Thirty Five and Dollars (U.S. \$153,235.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than April 1, 2032.

(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

- | | | |
|--|---|---|
| <input type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider | <input type="checkbox"/> Second Home Rider |
| <input type="checkbox"/> Balloon Rider | <input type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> 1-4 Family Rider |
| <input type="checkbox"/> VA Rider | <input type="checkbox"/> Biweekly Payment Rider | <input type="checkbox"/> Other(s) [specify] |

(I) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

4HOTCHKISS.KELL

 -6A(MN) (0005).01

1000649549

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Initials: KTH

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Form 3024 1/01

(L) "Escrow Items" means those items that are described in Section 3.

(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(N) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(O) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, with power of sale, the following described property located in the

COUNTY

of

SCOTT

:

[Type of Recording Jurisdiction]

[Name of Recording Jurisdiction]:

THE WESTERLY 38.91 FEET OF LOT 4, BLOCK 1, ORCHARD PARK 2ND ADDITION,
SCOTT COUNTY MINNESOTA

27-21004-0

Parcel ID Number:
318 APPLEBLOSSOM LANE
SHAKOPEE
("Property Address"):

which currently has the address of

[City], Minnesota 55379 [Street]
[Zip Code]

4HOTCHKISS, KELL

1000649549

Initials:

ETH
AH

12/14/01-6A(MN) (0005).01

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Kelly Hotchkiss

MEMORANDUM OF LAW

Debtor

Chapter 7, Case No. 04-34908

Mortgage Electronic Registration Systems, Inc. ("Movant"), submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

Movant holds a valid, perfected mortgage on real property owned by the Debtor. On the date of filing, the Debtor was delinquent under the note and mortgage. Since this case was filed Debtor has made no payments to Movant and the arrears total \$4,627.58.

ARGUMENT

1. Under Section 362.(d)(2) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such creditor." The Debtor in this case has failed to make payments required by the note and mortgage for a period of more than 3 months. Debtor has not otherwise provided Movant with adequate protection of its interest in the property. Such circumstances constitute cause, within the meaning of §362(d)(1), justifying relief from the stay. In Re: Video East, Inc., 41 B.R. 176 (Bkrcty. E.D. Pa. 1984); In Re: Frascatore, 33 B.R. 687 (Bkrcty. E.D. Pa. 1983).

2. Pursuant to §362(d)(2) of the Bankruptcy Code, relief from the stay is appropriate where Debtor has no equity and the property is not necessary to an effective reorganization. 11 U.S.C. §362(d)(2). See, In Re: Gellert, 55 B.R. 970 (Bkrcty. D. N. H. 1983). In this case the balance due Movant is \$154,368.12. The value of the property is approximately \$140,600.00.

Clearly, the Debtor has no equity in the property, and as this is a Chapter 7 case, the property is not necessary to an effective reorganization.

CONCLUSION

Movant is entitled to relief from the automatic stay pursuant to 11 U.S.C. §362(d)(1) for cause, where its interest in the secured property is not adequately protected. Movant is also entitled to relief from the automatic stay pursuant to 11 U.S.C. §362(d)(2) when Debtor has no equity, and when the property is not necessary to an effective reorganization.

Movant respectfully requests an Order of this Court modifying the automatic stay consistent with the attached proposed Order.

Dated: September 30, 2004

USSET & WEINGARDEN P.L.L.P

By: /E/ Paul A. Weingarden/Brian H. Liebo
Paul A. Weingarden, #115356
Brian H. Liebo #277654
Attorney for Movant
4500 Park Glen Road, #120
Minneapolis, MN 55416
(952) 925-6888

U.S. BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Kelly Hotchkiss

Debtor

UNSWORN DECLARATION
FOR PROOF OF SERVICE

Chapter 7, Case No. 04-34908

Erin Kay Buss, employed on this date by USSET & WEINGARDEN, attorney(s) licensed to practice law in this court, with office address of Suite 120, 4500 Park Glen Road, Minneapolis, Minnesota 55416, upon penalty of perjury, declares that on September 30, 2004, I served the annexed Notice of Hearing and Motion for Relief from Automatic Stay upon each of the entities named below by mailing to them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Minneapolis, Minnesota, addressed to each of them as follows:

Office of the United States Trustee
1015 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415

Patti J. Sullivan
Chapter 7 Trustee
P.O. Box 16406
St. Paul, MN 55116

Ronald J. Lundquist
Attorney at Law
10 S. 5th Street, Suite 700
Minneapolis, MN 55402

Kelly Hotchkiss
318 Appleblossom Lane
Shakopee, MN 55379

/E/ Erin Kay Buss
Erin Kay Buss

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Kelly Hotchkiss

ORDER

Debtor.

Chapter 7, Case No. 04-34908

The above entitled matter came on for hearing upon motion of Mortgage Electronic Registration Systems, Inc., ("Movant"), pursuant to 11 U.S.C. Section 362 on October 19, 2004, at the U.S. Bankruptcy Court, St. Paul, Minnesota. Appearances were as noted in the record. Based upon the evidence adduced at said hearing, the arguments of counsel, and the Court being fully advised of the premises,

IT IS HEREBY ORDERED THAT:

The automatic stay imposed by 11 U.S.C. §362 is hereby terminated as to the real property over which the Movant, its successors and/or assigns, has an interest, said property legally described as follows, to-wit:

The Westerly 38.91 feet of Lot 4, Block 1, Orchard Park 2nd Addition, Scott County, Minnesota.

Movant may proceed to foreclose its mortgage in accordance with Minnesota Statutes. Movant's request for attorneys fees and costs shall not be considered as this is governed by state law. Notwithstanding Federal Rules of Bankruptcy Procedure 4001(a)(3), this order is effective immediately.

Dated this __ day of _____, 2004.

Judge of the Bankruptcy Court